DETAILED ACTION

This action is in response to a preliminary Amendment filed on 4/17/06.

Claims 1-18 are pending in this application.

Specification

The disclosure is objected to because of the following informalities: The

disclosure appears to be a translation of another document. It appears the translation

has introduced a number of minor errors (e.g. pg. 5, lines 8-11 "frequency can be

managed every corresponding data update device"). Appropriate correction is required.

Drawings

Figure 17 should be designated by a legend such as --Prior Art-- because

only that which is old is illustrated (see pg. 1, lines 18-19). See MPEP § 608.02(g).

Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the

Office action to avoid abandonment of the application. The replacement sheet(s) should

be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not

to obstruct any portion of the drawing figures. If the changes are not accepted by the

examiner, the applicant will be notified and informed of any required corrective action in

the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 3 is objected to because of the following informalities: Claim 3 recites "the

update-frequency data storing unit stores the corresponding update-frequency data

every device identifier". It is believed this would better read the update-frequency data

storing unit stores the corresponding update-frequency data <u>for</u> every device identifier

Appropriate correction is required.

Claim 10 makes a similar recitation and is objected to accordingly.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

Claims 1-4, 6-7 and 17-18 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claim 1 recites "A data updating system for updating data in an electronic device

by using update data stored in a portable storage medium". Normally, the reference to

"a portable storage medium" (as defined by the applicant) would be sufficient to render

the claim statutory. However, it is noted that nowhere in the body of the claim is the

system positively tied to the "portable storage medium" (i.e. the body does not use the

term). More particularly it is also noted that claim 5 provides the additional limitation that

"the update permission judging unit and the update frequency updating unit are

provided in the portable storage medium". Accordingly, claim 1 is understood to

describe a broader system where the "the update permission judging unit and the

update frequency updating unit are [not] provided in the portable storage medium". Thus

claim 1's recitation of a "portable storage medium" is not believed to make the claim

statutory.

Claims 2-4 and 6-7 depend from claim 1 and are rejected for the same reasons.

Claim 12 fails to fall within a statutory category of invention. It is directed to a

program itself (i.e. "A program for making a computer execute"), not a process occurring

as a result of executing the program, a machine programmed to operate in accordance

with the program or a manufacture structurally and functionally interconnected with the

program in a manner which enables the program to act as a computer component and

realize its functionality. It's also clearly not directed to a composition of matter. Therefor

it is rejected as being non-statutory under 35 USC 101.

Claim 17 recites "A data updating method … using update data stored in a

portable storage medium" and as such is not tied to another statutory class (such as a

particular apparatus) and does not transform underlying subject matter (such as an

article of materials) to a different state or thing.

Similarly to claim 1, the body of claim 17 makes no explicit reference to a

"portable storage medium" and it is consequently not considered to be 'tied' to a

particular apparatus.

Claim 18 fails to fall within a statutory category of invention. It is directed to a

program itself (i.e. "A program for making a computer execute"), not a process occurring

as a result of executing the program, a machine programmed to operate in accordance

with the program or a manufacture structurally and functionally interconnected with the

program in a manner which enables the program to act as a computer component and

realize its functionality. It's also clearly not directed to a composition of matter. Therefor

it is rejected as being non-statutory under 35 USC 101.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 8 and 10-18 are rejected under 35 U.S.C. 102(b) as being

anticipated by US 6,094,723 to Otsuka (Otsuka).

Regarding Claim 1: Otsuka discloses a data updating system for updating data in an

electronic device by using update data stored in a portable storage medium, the data

updating system, comprising:

an update-frequency data storing unit that stores update-frequency data

including information on a frequency at which data update can be performed by using

the update data (col. 11, lines 42-47 "The number Np of permitted installation may be

recorded");

an update permission judging unit that judges the presence or absence of data

update permission on the basis of the update-frequency data when data is updated by a

data updating device for carrying out data update processing in the electronic device

(col. 13, lines 1-5 "the number Ni of times installation has been performed and the

number Np of permitted installations are compared");

an update data reading unit that reads the update data on the basis of the data

update permission (col. 13, lines 1-5 "processing for installing an application program

AP to the hard disk 4 is started");

an update frequency updating unit that updates the update-frequency data when

the update data is read by the data updating device on the basis of the data update

permission (col. 13, lines 39-48 "the number Ni is incremented"); and

a post-update data restoring unit that restores post-update data by using both the

update data and the pre-update data or by using only the update data (col. 13, lines 34-

37 "writes or updates the install management file on the disk 90").

Regarding Claim 3: The rejection of claim 1 is incorporated; further Otsuka discloses

an identifier storing unit that stores a device identifier for identifying the data update

device (col. 11, lines 58-62 "the identification information of a drive … as a destination-

drive verification information"),

wherein the update-frequency data storing unit stores the corresponding update-

frequency data [for] every device identifier (col. 11, line 66-col. 12, line 2 "information of

the first installation to that of the 15th installation").

Regarding Claim 4: The rejection of claim 1 is incorporated; further Otsuka discloses

the update-frequency data storing unit stores update-frequency data including

information indicating an update frequency at which the data update is carried out by

the data updating device and information indicating an upper limit frequency at which

the data update is allowed (col. 11, lines 42-47 "The number Ni … The number Np").

Regarding Claim 5: The data updating system according to claim 1, wherein the

update permission judging unit and the update frequency updating unit are provided in

the portable storage medium (Fig. 14 "Install System" of disk 90).

Regarding Claim 6: The rejection of claim 1 is incorporated; further Otsuka discloses:

a restoration result judging unit that judges pertinence of post-update data

restored by the post-update data restoring unit (col. 13, lines 27-30 "whether the

installation has been succeeded is checked"); and

a post-update data writing unit that writes the post-update data (col. 13, lines 34-

37 "writes or updates the install management file on the disk 90").

Regarding Claim 8: Otsuka discloses an external storage medium for a data updating

system for updating data in an electronic device by using update data, and the external

storage medium being connectable to and separable from a data updating device for

carrying out data update processing in the electronic device, the external storage

medium, comprising:

an update data storing unit that stores the update data (Fig. 15);

an update-frequency data storing unit that stores update-frequency data including information on a frequency at which data update can be performed by using the update data (col. 11, lines 42-47 "The number Np of permitted installation may be recorded");

an update permission judging unit that judges the presence or absence of data update permission on the basis of the update-frequency data when data is updated by the data updating device (col. 13, lines 1-5 "the number Ni of times installation has been performed and the number Np of permitted installations are compared"); and

an update frequency updating unit that updates the update-frequency data when the update data is read by the data updating device on the basis of the data update permission (col. 13, lines 34-37 "writes or updates the install management file on the disk 90").

Regarding Claims 10-11: Claims 10-11 present limitations similar to those presented in claims 3-4 and are rejected accordingly.

Regarding Claim 12: Claim 12 is directed to a program providing the functionality of claim 8 and is rejected accordingly.

Regarding Claim 13: Otsuka discloses a data updating device in a data updating system for carrying out data update in an electronic device by using update data, and

the data updating device being configured to be connectable to an external storage

medium for storing the update data, the data updating device comprising:

        an update data reading unit that reads the update data on the basis of data

update permission in the external storage medium (col. 13, lines 1-5 "processing for

installing an application program AP to the hard disk 4 is started"); and

        a post-update data restoring unit that restores post-update data by using both the

update data and pre-update data or only the update data (col. 13, lines 34-37 "writes or

updates the install management file on the disk 90").

Regarding Claims 14-15: Claims 14-15 present limitations similar to those of claims 3

and 6 and are rejected accordingly.

Regarding Claim 16: Claim 16 is directed to a program providing the functionality of

claim 13 and is rejected accordingly.

Regarding Claim 17: Claim 17 presents limitations similar to those of claim 1 and is

rejected accordingly.

Regarding Claim 18: Claim 18 is directed to a program providing the functionality of

claim 17 and is rejected accordingly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,094,723 to Otsuka (Otsuka) in view of US 2002/0169952 to DiSanto et al. (DiSanto).

Regarding Claim 2: The rejection claim 1 is incorporated; further Otsuka does not

disclose an update data deleting unit that deletes the update data when the update

permission judging unit judges that there is no data update permission.

DiSanto teaches a data deleting unit that deletes data to prevent unauthorized access

to a file (par. [0056] "erase the non-encrypted version to prevent unauthorized access to

the file").

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to include an update data deleting unit (DiSanto par. [0056] "erase the non-

encrypted version to prevent unauthorized access to the file") in Otsuka's distribution

system (e.g. Otsuka Fig. 21, Disk 90) to delete the distribution data when an attempted

unauthorized access is detected (Otsuka col. 13, lines 1-5 "the number Ni of times

installation has been performed and the number Np of permitted installations are compared"). Those of ordinary skill in the art would have been motivated to do so in order to further ensure no unauthorized use of the application is allowed (Otsuka col. 1, lines 34-39 "eliminate illegal use of an application program"; par. [0056] "prevent unauthorized access to the file").

Regarding Claim 9: Claim 9 presents limitations similar to those presented in claim 2 and is rejected accordingly.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,094,723 to Otsuka (Otsuka) in view of US 6,018,747 to Burns et al. (Burns).

Regarding Claim 7: The rejection of claim 1 is incorporated; further Otsuka does not explicitly disclose the update data includes differential data between the pre-update data and the post-update data.

Burns teaches update data including differential data between pre-update data and post-update data (col. 3, lines 21-27 "a delta file, representing the new version … as a set of changes from the previous version").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to restrict the use of an update (Otsuka col. 1, lines 34-39 "eliminate illegal

use of an application program by preventing unlimited installation form a recording

medium") including differential data (Burns col. 3, lines 21-27 "a delta file, representing

the new version … as a set of changes from the previous version"). Those of ordinary

skill in the art would have been motivated to do so in order to ensure only authorized

use of the updates (Otsuka col. 1, lines 34-39 "eliminate illegal use of an application

program by preventing unlimited installation form a recording medium") while

concurrently reducing the space required to store the update (Burns col. 3, lines 21-27

"This delta encoding should generally be … 10 to 1000 times smaller than the new file

version").

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jason Mitchell whose telephone number is (571)272-

3728. The examiner can normally be reached on Monday-Thursday and alternate

Fridays 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bullock Lewis can be reached on (571) 272-3759. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Mitchell/
Primary Examiner, Art Unit 2193